



Appeal Decision

Site visit made on 15 July 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2020

Appeal Ref: APP/Z3635/C/20/3244698

**Land and premises known as Unit 7, Shepperton Industrial Estate,
Littleton Lane, Shepperton TW17 0NF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Miss Elizabeth Richardson of 365 Concrete Ltd against an enforcement notice issued by Spelthorne Borough Council.
 - The enforcement notice was issued on 5 December 2019.
 - The breach of planning control as alleged in the notice is: The carrying out on the land of building, engineering, mining or other operations in particular the construction of a large workshop building and the use of that building, without planning permission. The approximate location of which is hatched in black on the attached plan to the notice.
 - The requirements of the notice are: 1. Cease the use of the building for the construction of lorries for the delivery of concrete products. 2. Removal of the workshop building. 3. Removal of all residue materials from the land following removal of the workshop.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with corrections.

The Enforcement Notice

2. The enforcement notice requires the cessation of the use of the building enforced against for specific activities, prior to its removal. However, these specific activities are not specified in the alleged breach of planning control and the uses taking place within the building would naturally cease upon its removal in any event. Injustice to the parties would not therefore arise from correcting the enforcement notice to omit the cessation requirement. Furthermore, it is necessary to correct the enforcement notice to ensure the remaining requirements are precise, which I shall do in my formal decision below as injustice to the parties would not arise.

Reasons

3. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the

matters stated in the notice, which namely is the erection of a building. The latest date for the substantial completion of the building would thus be 5 December 2015.

4. The building is said by the appellant to be a temporary one with an inflated roof. However, it is a building of substantial size which I could see during my site visit was situated on a concrete pad. It is then physically affixed to this by means of nuts and bolts, or threaded bars, that support substantial metal uprights at regular intervals to the concrete pad. These metal uprights extend the entire height of the building to the eaves level.
5. The building also has permanence given it has been in situ for some time. The building enforced against is therefore development for the purpose of Section 55 of the Town and Country Planning Act, 1990, as amended. Whilst the building is said to be of pop-up construction, and could perhaps therefore be disassembled in the future, that is not the relevant test. There is also no ground (b) or (c) appeal or any such evidence before me to indicate that there has not been a breach of planning control or that the building is permitted development.
6. The case of the appellant is therefore that the building was put up by a company called Smart Space Ltd during the week commencing 22 June 2015. The evidence underpinning this assertion amounts to a rental invoice for the site for a period in 2015. This however does not demonstrate anything in respect of the building itself. There is also confirmation of a bill payment to Smart Space Ltd, actioned on 22 May 2015, which is said to relate to the building. However, even taking this to be the case, it does not demonstrate when the construction of the building itself was substantially complete on the site.
7. There is also an email dated 22 May 2015 relating to the purchase of the building. It appears from this that it was intended for the building to be delivered on 22 June 2015 with an installation date the following week. This is however not a confirmed date and the email itself, being from May 2015, does not demonstrate on the balance of probabilities that the building was then delivered or substantially complete in June 2015, or indeed provide evidence of any date by which it was substantially complete. The site location given in the email also relates to a different address which then calls into question whether the email relates to the appeal site and building, which undermines the quality of this evidence.
8. I appreciate the Council has no evidence to directly dispute the appellant's versions of events, other than to query the quality of the evidence. Nevertheless, it remains that the appellant's own evidence needs to be sufficiently precise and unambiguous to demonstrate their case.
9. The evidence of the appellant is therefore vague and ambiguous and does not demonstrate on the balance of probabilities that it was too late for the Council to take enforcement action against the said building when it did in December 2019.

Conclusion

10. For the reasons given above I conclude that the appeal should not succeed. I shall therefore uphold the enforcement notice with corrections.

Formal Decision

11. It is directed that the enforcement notice be corrected by:

- deleting the words "*1. Cease the use of the building for the construction of lorries for the delivery of concrete products. 2. Removal of the workshop building. 3. Removal of all residue materials from the land following removal of the workshop.*" and their replacement with the words "*1. Permanently remove the workshop building from the land to which this notice relates. 2. Remove all residue materials from the land to which this notice relates following the removal of the workshop building.*"

12. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR